



Request for Information – Response  
October 16, 2020

TO: Texas House Committee on Public Health  
[PublicHealth@house.texas.gov](mailto:PublicHealth@house.texas.gov)

FROM: Lee Johnson, MPA  
Deputy Director, Texas Council of Community Centers  
8140 N Mopac  
Westpark Building 3, Ste. 240  
Austin, Texas 78759

**RE: Request for Information (RFI) Response for Interim Charge 2 – Due October 16<sup>th</sup>**

*Interim Charge 2: Review how Texas is preparing for state and federal budgetary changes that impact the state's health programs, including: the Family First Prevention Services Act; the next phase of the 1115 Healthcare Transformation and Quality Improvement Program Waiver; Texas' Targeted Opioid Response Grant; the Centers for Medicare and Medicaid Services proposed Medicaid Fiscal Accountability Rule, and the Healthy Texas Women Section 1115 Demonstration Waiver.*

Texas Council of Community Centers represents the 39 Community Mental Health and Intellectual Disability Centers (Centers) throughout Texas statutorily authorized to coordinate, provide, and manage community-based services, as alternatives for institutional care, for persons with intellectual and developmental disabilities, serious mental illness, and substance addictions. In many areas of the state Centers are known as Local Mental Health Authorities (LMHAs) and Local IDD Authorities (LIDDAs).

**Interim Charge 2** related to the next phase of the 1115 Healthcare Transformation and Quality Improvement Program Waiver:

**Texas Council 1115 Transition Plan Proposal**

The 1115 Delivery System Reform Incentive Payment (DSRIP) program has been a game-changer for behavioral health care in Texas, advancing services for persons with serious mental illness (SMI), including people with co-occurring conditions of substance use disorders, intellectual disabilities and other chronic health conditions. The program mobilized communities across Texas in efforts to plan, build and link local systems of care to increase access to behavioral health services – both enhancing services for people already in state funded mental health services and expanding capacity for new people accessing care.

With the current 1115 DSRIP program slated to end in October 2021, Texas must determine how to maintain the access to care afforded by the program, and continue to make progress across our system to ensure that people with SMI, and co-occurring conditions, receive well-coordinated care.

In DSRIP programs operated by the 39 statutorily authorized public Community Mental Health Centers (CMHCs), the nonfederal share of Medicaid is covered through an Intergovernmental Transfer (IGT) financing strategy, funded largely by leveraging state general revenue (GR). In the new financing structure proposed by the Texas Council, the nonfederal share would continue to be covered with state GR, but financed through managed care.

Per direction from the Health and Human Services Commission (HHSC) the Texas Council submitted a transition plan based on three interacting components:

- statewide access to Certified Community Behavioral Health Clinics (CCBHC) model of care identified by the Centers for Medicaid and Medicare Service (CMS) as an innovative program<sup>1</sup>;
- an associated value-based directed payment program, identified by the Centers for Medicaid and Medicare Service (CMS) as an acceptable transition strategy<sup>2</sup>; and,
- the creation of a target population of uninsured people with serious mental illness (SMI) who are diagnostically and functionally eligible for state funded mental health services.

All three components of our proposed transition plan are necessary to sustain the access to essential services, made possible by the 1115 DSRIP program, when the program ends.

The importance of a viable 1115 DSRIP transition plan for SMI cannot be overstated. In fiscal year 2020, the DSRIP program generated \$333 million in federal funds for the public mental health system, providing enhanced services for more than 100,000 existing clients and expanding access to more than 120,000 clients who did not previously have access to care<sup>3</sup>. These federal funds represent more than 40 percent of CMHC mental health funding. Without question, failure to have a viable transition plan in place would cause a substantial loss of capacity in the public mental health system.

#### Transition Plan Implementation Strategies:

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<sup>1</sup> State Medicaid Director (SMD) Letter, #18—011, Opportunities to Design Innovative Service Delivery Systems for Adults with a Serious Mental Illness or Children with a Serious Emotional Disturbance.

<https://www.medicaid.gov/federal-policy-guidance/downloads/smd18011.pdf>

<sup>2</sup> Under 42 C.F.R. SS 438.6(c)(2), CMS will approve the directed payment when the arrangement:

- (1) Is based on the utilization and delivery of services;
- (2) Directs expenditures equally, and using the same terms of performance for a class of providers providing the service under the contract;
- (3) Expects to advance at least one of the goals and objectives in the quality strategy in SS 438.340;
- (4) Has an evaluation plan that measures the degree to which the arrangement advances at least one of the goals and objectives in the quality strategy;
- (5) Does not condition network provider participation in the model on the network provider entering into or adhering to intergovernmental transfer agreements; and
- (6) May not be renewed automatically.

<sup>3</sup> Data Source: Information for valuation on 1115 was found at <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/medicaid-1115-waiver> under recent updates Total Payments to Date for DY1-10(Excel)

Detailed information on payments was retrieved from <https://hhs.texas.gov/laws-regulations/policies-rules/waivers/1115-medicaid-waiver-tools-guidelines-regional-healthcare-partnership-participants> under DSRIP Project Payment Summaries which has the detailed files from each DSRIP payment since the waiver started.



- **Build on the STAR+PLUS framework.** Establish Certified Community Behavioral Health Clinics (CCBHC) as a class of providers and creating a directed payment strategy through managed care to pay for CCBHC services. CCBHCs are a service delivery model that provide comprehensive integrated services including primary care, mental health and substance use disorder services. HHSC has certified 18 of 39 public CMHCs as CCBHCs and is on track to achieve the goal of certifying the remaining CMHCs by July 2021.
- **Promote Access to Care for SMI Target Population under the STAR+PLUS managed care program.** Create a target population of adults with SMI who meet financial and diagnostic eligibility criteria that would be assessed annually. Under CMS rules, Texas has the flexibility to identify a target population and put controls in place to provide budget certainty for the state.
- **Establish an Integrated Capacity Building Initiative.** Maximize local and federal funding through the waiver, establishing a mechanism to take integrated care for individuals with SMI to scale. This funding will allow the system to increase access to integrated primary, mental health and substance addiction services, as well as address social determinants of health, in ways that make the most sense in communities across Texas. To fund this initiative, CMHCs will continue to provide match to draw down federal funds.

By creating a target population for adults with SMI, and establishing statewide access to Certified Community Behavioral Health Centers (CCBHCs), Texas will experience decreases in uncompensated care, inappropriate use of the emergency department, inpatient utilization, potentially preventable readmissions, and inappropriate use of jails.

#### **One-Year DSRIP Extension (Request)**

COVID-19 has impacted provider systems across the state, requiring an immediate shift in service delivery from in-person care, to telehealth/telemedicine and audio only service delivery modalities. The scale of this significant and swift change was necessary to ensure continued access to care for people with serious mental illness, substance use disorders and intellectual and developmental disabilities.

HHSC efforts to develop the required 1115 Transition Plan have also been delayed due to the demands of COVID-19. The Texas Council of Community Centers joined with other health care and hospital associations to seek a one year extension of the current Delivery System Reform Incentive Payment (DSRIP) program.

A one year extension is needed to ensure provider systems can thoughtfully transition DSRIP services to a new model of care that provides the best possible opportunity to sustain the progress made for Texans through DSRIP initiatives.

If a one year extension of DSRIP is approved by CMS, action must be taken by the 87th legislature (through appropriations) to ensure the CCBHC directed payment strategy and SMI target population begin in FY 2023 (2nd year of the FY22/23 biennium).

If a one year extension of DSRIP is not approved by CMS, action must be taken by the 87th legislature (through appropriations) to ensure the CCBHC directed payment strategy and SMI target population begin in FY2022 (1st year of the FY22/23 biennium).

Without an extension and/or implementation of a viable 1115 Transition Plan, as proposed by the Texas Council, the public mental health system will lose \$333 million a year in federal funds now supporting access to expanded and enhanced mental health and substance addiction services.

**Interim Charge 2** related to the Medicaid Fiscal Accountability Rule (MFAR):

### **Proposed MFAR Withdrawn By CMS**

In a policy announcement released September 14, 2020 on Twitter, Seema Verma, Administrator for the Centers for Medicare and Medicaid Services (CMS), announced withdrawal of the Medicaid Fiscal Accountability Rule (MFAR) from the regulatory agenda. The following summary of comments submitted by the Texas Council to CMS in response to the proposed MFAR is provided in the event CMS reverses its most recent announcement and moves forward with the rule or similar regulatory requirements.

### **Overview of Potential MFAR Impact on Community Centers**

As a system of care, Community Centers provide vital, transformative services for more than 600,000 people across all of Texas – people who are among the most complex individuals supported anywhere in the healthcare system. The state of Texas, in collaboration with state and local governmental entities, has long relied on allowable intergovernmental transfers (IGTs) and certified public expenditures (CPEs). Additionally, the state utilizes allowable health care-related taxes. These arrangements demonstrate the longstanding flexibility states require in order to finance programs to meet specific needs of their most vulnerable populations.

Given the vast scope of state activities that would be affected by the proposed changes—and the lack of detail in key parts of the regulation outlining how CMS plans to address the impact on states’ long-term financial planning and beneficiaries’ access to services—we strongly urged CMS to withdraw the proposed rule and seek further input from stakeholders before promulgating any additional rulemaking. We were pleased to see Administrator Verma’s announcement on September 14, 2020.

Among our concerns with the proposed rule are four areas that would particularly devastate the state’s ability to administer the Medicaid program:

1. the proposed change to the definition of “public funds” fails to account for the complexities of states’ delivery systems and introduces unnecessary subjectivity;
2. the “totality of the circumstances” and “net effect” standards for evaluating health care- related taxes are impermissibly vague and could lead to inconsistent enforcement;
3. the proposed sunset of financing mechanisms after three years creates significant administrative burden and challenges for states to engage in long-term planning; and
4. proposed rule will result in a loss of resources and commensurate reductions in access to services.

